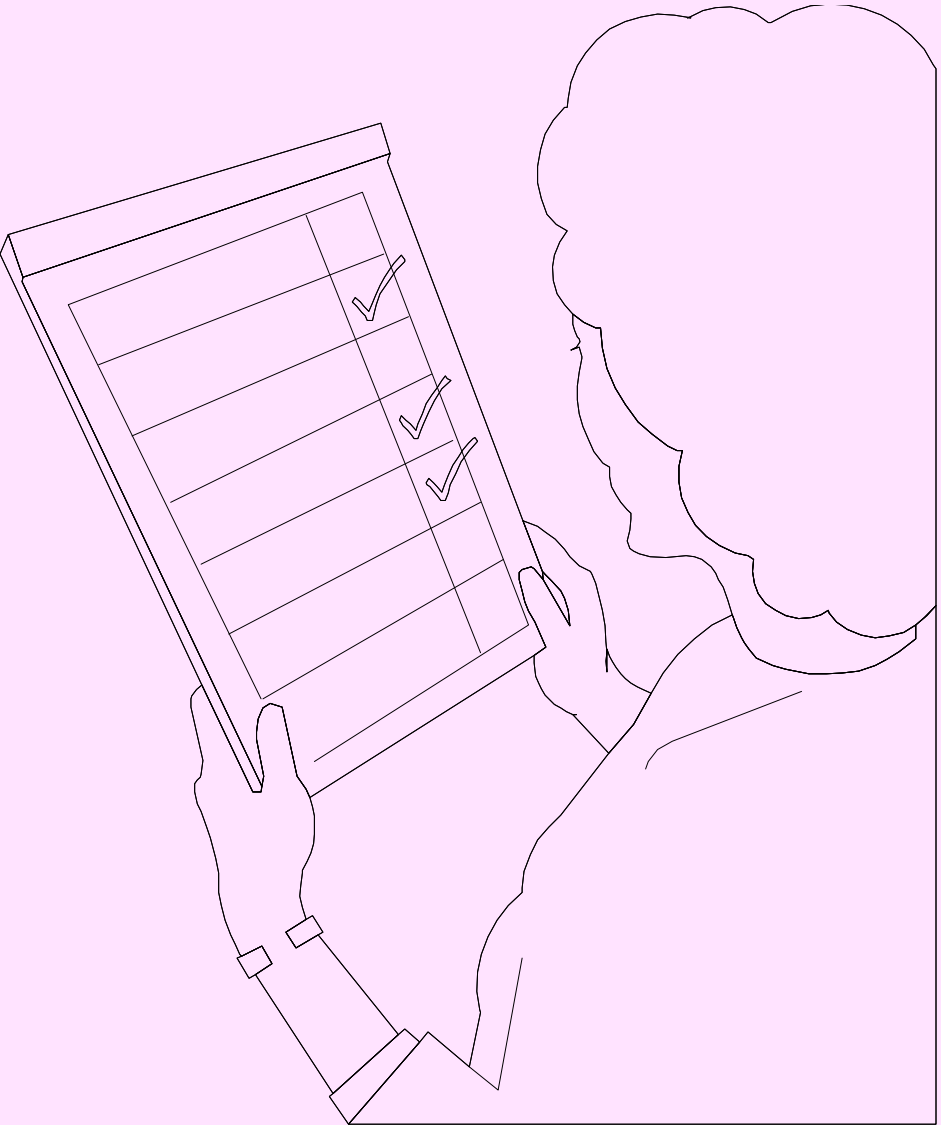
CIVILIAN PERSONNEL ADVISORY CENTER (CPAC)

Management Training:

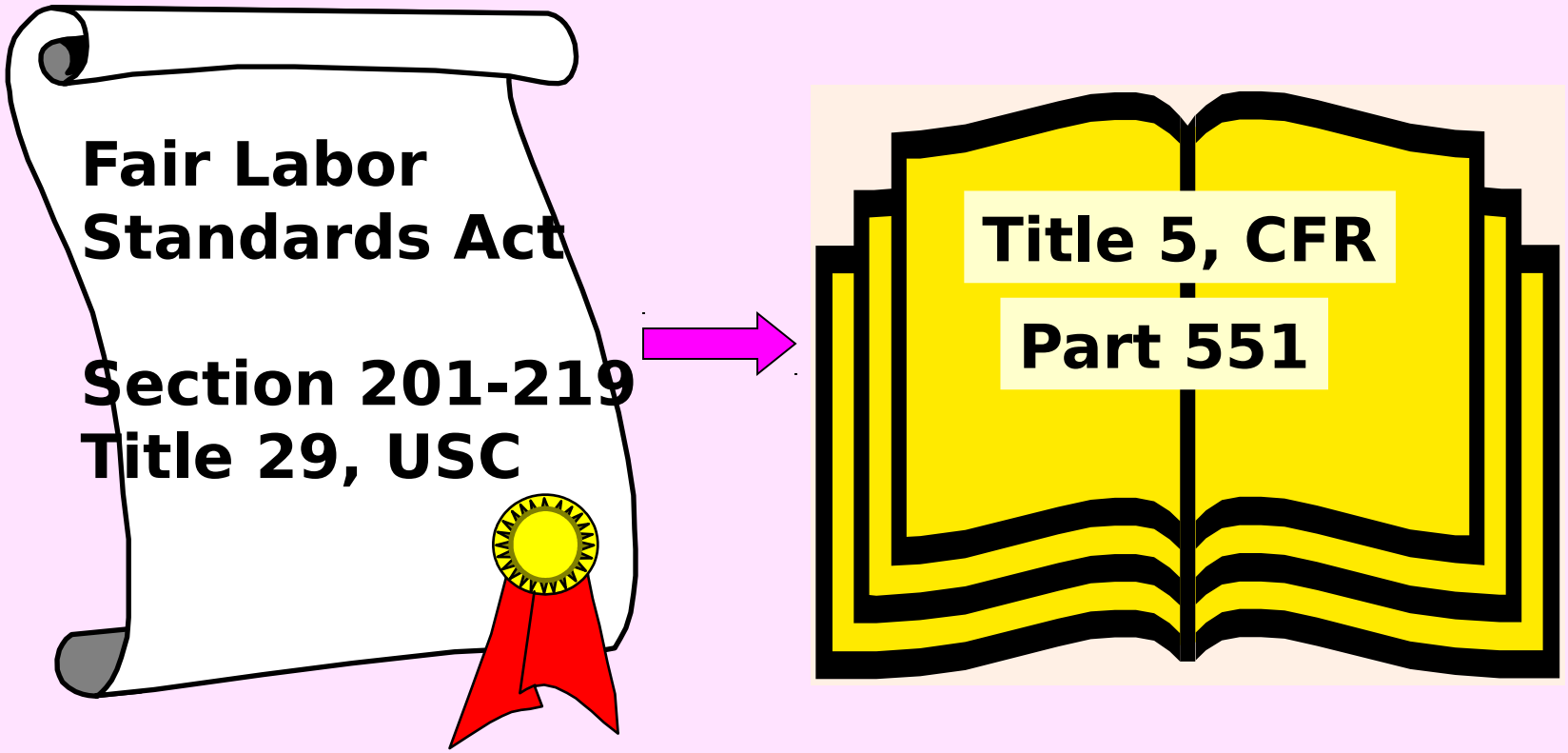
Fair Labor Standards Act

FLSA TRAINING AGENDA



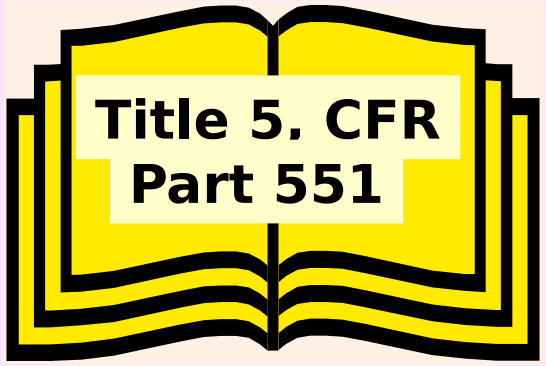
- **Overview**
- **FLSA Status - E or N**
- **Hours of Work**
- **Overtime Provisions**
- **FLSA Claims**
- **References**

OVERVIEW


Fair Labor
Standards Act
Section 201-219
Title 29, USC
Title 5, CFR
Part 551

OVERVIEW

- **Provides minimum standards for wages and overtime entitlements**
- **Specifies procedures for compensation for "hours of work"**



- **Nonexempt - covered by the minimum wage and overtime provisions of the Act**
- **Exempt - not covered by the minimum wage and overtime provisions of the Act**

DETERMINING FLSA STATUS - GENERAL PRINCIPLES

Presume nonexempt unless clearly meets exemption criteria

Exemption criteria should be narrowly construed

If reasonable doubt - designate nonexempt

Burden of proof for exemption rests with agency

E or N determined by the actual duties

Temporary work or duties may affect FLSA exemption status

DETERMINING FLSA STATUS - GENERAL PRINCIPLES

GROUPS THAT DON'T MEET ANY EXEMPTION CRITERIA

- **Nonsupervisory GS Employees:**
  - **equipment operating and protective occupations**
  - **technicians at GS-9 or below**
  - **any grade involving highly specialized technical skills acquired through prolonged training or experience**
    - **-- Air Traffic Control**
    - **-- Aircraft Operation**
- **Most clerical occupations**

DETERMINING FLSA STATUS - GENERAL PRINCIPLES

General Schedule Employees

GS-4 or below - nonexempt

GS-5 or above - exempt only if the employee
is an executive, administrative, or professional employee as defined in 5 CFR 551

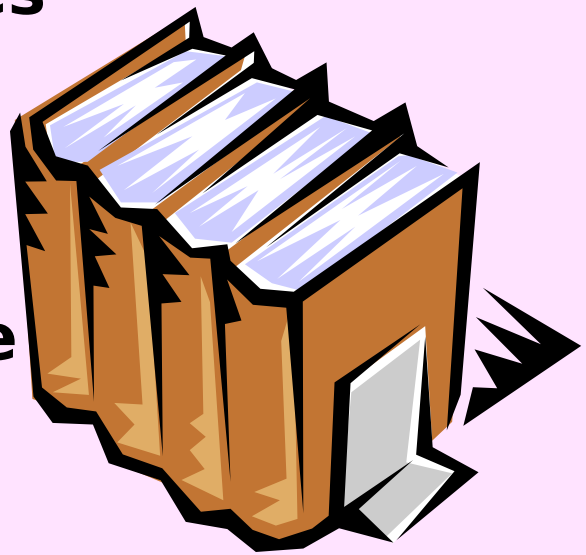
Federal Wage System Employees

Nonsupervisory employees are nonexempt

Supervisory employees are exempt only if they
meet the executive exemption defined in

5 CFR 551 - EXEMPTION CRITERIA

- **Foreign exemption - those employed in foreign countries and certain U.S. territories**



- **Executive employee**
- **Administrative employee**
- **Professional employee**

FLSA STATUS DETERMINATION

ROLES

Supervisor assigns duties & classifies position

CPOC reviews job and determines if "E" or "N"

Employee has right to challenge FLSA status or

5 CFR 551 - HOURS OF WORK

DEFINED AS:

”All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency"

INCLUDES:

- **hours when required to be on duty**
- **hours suffered or permitted to work**
- **waiting time or idle time which is**

5 CFR 551 - HOURS OF WORK

nder certain conditions, "hours of work" include:

- **Preparatory or concluding activities (551.412)**
- **Time spent traveling (551.422)**
- **Time spent in training or attending conferences (551.423)**
- **Time spent adjusting grievances or performing representational functions (551.424)**
- **Time spent receiving medical attention (551.425)**

5 CFR 551 - HOURS OF WORK

SUPERVISORS' RESPONSIBILITY:

Exercise appropriate controls such that the only work performed is that for which you <u>intend to compensate the employee</u>

Keep complete, accurate records of all hours worked

OVERTIME FOR NONEXEMPT EMPLOYEES

Nonexempt Employees

- **Entitled to overtime pay at 1.5 times their regular pay**

- **Must receive overtime pay for "hours of work" which exceed their regular tour of duty**

- **May *request* compensatory time (in**

OVERTIME FOR EXEMPT EMPLOYEES

Exempt Employees

- 5 CFR 550.101-113 authorizes OT for GS
- OT pay capped at 1.5 times GS-10 step 1
- If basic pay is GS-10 step 10 or below,
  employee chooses OT vs. comp time
- If basic pay is above GS-10 step 10, management chooses OT vs. comp time

- 5 CFR 532.503 authorizes OT for Wage System employees @ 1.5

FLSA Claims

- **Employees entitled to file a claim**
- **Claims may concern**
  - **status determination - file at any time**
  - **overtime pay - file at any time but:**
    - **2-year statute of limitations**
    - **3 years for willful violations**
    - **date claim received determines period of entitlement**

FLSA Claims - Bargaining Unit Member

Negotiated Grievance Procedure

- **If claimant was a bargaining unit member *at any time* during the claim period**
- **Exclusive administrative remedy**
- **No further administrative review by agency or by OPM**

FLSA Claims - Non-Bargaining Unit Member

Administrative Review

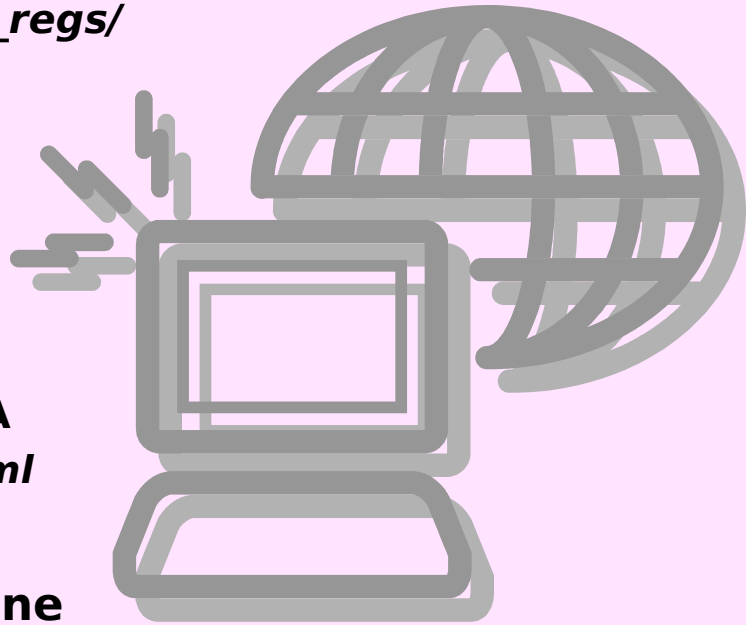
- **Employee may file with agency or with OPM (but not simultaneously) if:**
  - **not a member of a bargaining unit**
  - **bargaining unit member but not covered by a collective bargaining agreement**
  - **bargaining unit member whose agreement excluded FLSA matters**

FLSA Claim for Non-bargaining Unit Employees

- **Must be in writing - be specific (suggested format posted on CPAC home page)**
- **Will be submitted to the employee's supervisor for review and resolution**
- **Supervisor must acknowledge receipt, in writing, and provide written decision to the claimant**
- **Claims may be submitted to OPM either:**
  - **after the local review and decision (if not satisfied) *OR***
  - **in lieu of the local review**

References/Additional Information

- **AMCOMReg 37-34, Overtime for Civilian Employees, 13 Jul 99**
  AMCOM Directives On-Line
  https://intranet2.redstone.army.mil/amcom_regs/



- **OPM Federal Employees and the FLSA**
  OPM Web page
  http://www.opm.gov/flsa/index.htm

- **Code of Federal Regulations**
  5 CFR 551 Pay Administration Under the FLSA
  http://www.access.gpo.gov/nara/cfr/index.html

- **Dept of Army Civilian Personnel On-Line**
  PERMISS - "Fair Labor Standards Act" "FLSA and Overtime"
  ***http://www.cpol.army.mil/* "*permiss*"**

- **AMCOM CPAC Home Page**
  http://www.redstone.army.mil/cpo/